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Security Policy and Illegal Migration Including Trafficking in Human Being

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Executive summary

Context and importance of the problem

Human Trafficking (the movement of persons across borders for illicit purposes and in pursuit of profit) is a growing transnational criminal phenomenon. The United Nations estimates that 4 million people are trafficked each year, resulting in \$7 billion in profits to criminal groups

(i)http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _edn1.

(ii)http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _edn2

Today this problem recognize as a big international problem and as a one of the top international priorities for USA and UE

(iii)http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _edn3.

Trafficking in human being has attracted increasing attention from different international institution during the last few years. Illegal migration and human trafficking has been recognized as one of the most serious factors threatening as national as an international security.

As organize crime trafficking in women for the purpose of sexual exploitation is an increasing type of international criminal group generating high profits with low risk for traffickers

(iv)http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _edn4.

Trafficking networks may recruit and transport women legally or illegally for slavery-like work, including forced prostitution, sweatshop labor, and exploitative domestic servitude.

Trafficking helps perpetuate systemic government corruption. It helps fund the expansion of other organized crime activities as traffickers are often also engaged in trafficking arms and drugs. The quick and continuous profits made from trafficking also permit the criminal organizations to expand into other areas of illicit activity

(v)http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _edn5.

Trafficking in women as a shadow economy does not bring financial prosperity to local communities. The women often end up with nothing, or any money they earn comes at great cost to their health, emotional well being and standing in the community. The money made by the criminal networks does not stay in poor communities or countries, but is laundered through bank accounts of criminal bosses in financial centers, such US, Western European countries or in off-shore accounts

(vi).http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _edn6

With the collapse of the USSR, thousands of Ukrainian and Russian women were trafficked into sexual exploitation across the globe. Ukraine, owing to its geographical location and transparent border with Russia, has long played the role of a transit country for migrant flows from Asia to Western and Central Europe. In addition, due to strict control at western the border and absence of real mechanism of readmission of detainees, Ukraine has steadily been turning into a country of accumulation of illegal migrants.

One of the areas of the world where trafficking is growing fastest is the former Soviet Union

(vii)http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _edn7.

Human trafficking from Ukraine

(viii)http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _edn8,

especially for sex work, is a serious and increasing problem for the country. Evidence exists from a wide variety of sources including police, NGOs, health care providers, prosecutors and international organizations of the widespread and increasing nature of the problem

(ix)http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _edn9.

Following a recent study by the International Organization of Migration (IOM)

(x)http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _edn10

reference is now being made to 420,000 women having been trafficked out of the country in the last few years alone

(xi)http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _edn11.

Since most Western country has imposed strict limits on the numbers of legal migrants who can enter their territories, many women are forced to accept the service of traffickers if they wish to migrate. Most forms of labor migration from developing countries to Western Europe are severely restricted. A legal work option available to migrant women is work in the entertainment sector as “artists” or “dancers”. In practice this type of work is frequently linked to work in the sex industry.

According to the different research women from Ukraine have a strong economic incentive to seek employment in Central Europe where living standards are higher than in the countries of transition. The main reason why do so many Ukraine women want to go to abroad is:

1. Liberalization of law enabling international travel both to Ukraine and to the European Union.
2. The introduction of a free market economy. The previously unknown unemployment has stricken women first and most of all, both economically and psychologically. Women were the first to lose their jobs and the possibilities of finding a new position are, to say the least, not promising, especially outside the big cities. Migration is especially popular among young women from small, underdeveloped cities and countryside where jobs are very scarce. Women in those areas cannot find a position in their own professions such as salesperson, teacher, nurse. It should be added that work in these occupations is very low paid as well and cannot assure economic independence.
3. The disappearance of the social security state system.
4. The myth of an easy and affluent life in the West and the tradition of migrant workers also contribute to the phenomenon of accepting a job abroad.

In discussions on trafficking, particular attention must be given to the question of the voluntaries of the migrants' movement. In Ukraine the transition to a market economy has resulted in huge job losses and an increase in poverty

(xii).http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _edn12

Given this context, it is not surprising that many young women are keen to find employment in the West, and to travel to countries which for years inaccessible to them. The economic and political reform process in Ukraine has been slow compared to some other countries under former Soviet regime. Today, where some countries are showing remarkable political, social and economic progress towards stability and democracy, Ukraine is lagging behind in its transition process. The most notable reason for that is the

issue of governance. Ukraine has hesitantly embarked upon political, economic and social reforms essential to democratization. That situation leads to the real stuck in economical, legal and political reforms currently underway in Ukraine. The prolonged political and socio-economic transition has had severe implications. One of them is marginalization and, to some extent, exclusion of some groups from the social and political fore front. One of those groups is a woman.

Critique of policy option(s)

The Government of Ukraine has employed different strategies to address the issue of trafficking in people. The Government does not condone trafficking and has taken a series of concrete measures in order to respond to this severe problem in Ukraine, and can now said to be in the forefront in the criminalization of this crime in Europe.

The Ukrainian Government has adopted several international instruments in regards to prevention of trafficking in human been. The latest international instrument – the Protocol to Prevent, Suppress and Punish trafficking in person, Especially Women and Children, supplementing the United Nations Conventions Against Transnational Organize Crime was signed by Ukraine on 15 November 2001, and now Ukraine in process for ratification to the Ukrainian legislature.

In 1998, Ukraine has adopted a criminal law against trafficking in people, making Ukraine one of the first countries in Europe to formally criminalize this offence by adoption a discrete Trafficking statute. Article 124-1 was added to then effective Criminal Code of Ukraine. For the first time in its legal practice Ukraine legally bind sanctions for trafficking in people including women.

When reviewing and considering legal measures to counter a particular societal problem, the legal and social contexts in which this measures will function are crucial. This is especially important when penal measures are considered. The criminal law is one of the most intruding instruments in the hand of the state authorities with respect to citizen. The question is first and foremost – as to whether this fits into the Rule of Low (xiii)http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _edn13. Moreover, it is important to make a difference between the law in the books and the law in actions.

Preventive measures should primarily aim at strengthening the position of women and other vulnerable groups and the protection of the human rights (xiv)http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _edn14 of trafficked persons should be at the core of any anti-trafficking policies.

Although at this moment Ukraine mainly functions as a country of origin it is important understand that in a perspective Ukraine can be function as a country of transition or destination.

Ukraine may be considered a country in transition from a communist totalitarian state to a democratic society, which is governed by the Rule of Low. One of the major problems faced in this process, is the wide spread existence of corruption, which affects all level of

society, including police, prosecutors and judges. Ineffective privatization, the lack of law enforcement, lack of Rule of Law, the professionalization of organized crime, and the absence of a legal culture have allowed organized crime to flourish from trafficking.

Human trafficking definition and its implementation into a legal practice

Forasmuch as human trafficking is a growing transnational criminal phenomenon there are so many different agencies, organizations and groups around the globe have recognized the problem and raised it at the highest national and international level. In this connection emerge difficulties to obtain consensus on a precise and workable legal definition of the term. These definitional problems are made particularly intractable by the fact that “trafficking in people” is used as an umbrella term to cover a range of actions and outcomes, rather than a single, unitary act leading to one specific outcomes (xv).http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _edn15

View as a process, trafficking can be said to entail several phases – recruitment, transportation (which could be across several countries), and control in the place of destination. Different groups, agents or individuals may be involved in different phrases of the process, and can organize recruitments, transportation and control in a variety of different ways.

When we try to provide more detail trafficking definition first of all we should keep in mind that different countries has different definitions and has different laws that define trafficking and modern-day slavery. Trafficking in persons is broadly defined as modern-day slavery as the movement of person across border for illicit purpose and in pursuit of profit, but different countries and laws provide variations on the exact definition.

Human trafficking may take many forms, including trafficking:

- a) in the sex industry;
- b) into forced labor in factories, restaurants, or agricultural work;
- c) into domestic servitude as a servant, housekeeper, or nanny;
- d) as a bride;
- e) of organs;

One of the problem is that whilst trafficking as a whole, and some of its possible elements (such as slavery) may be universally deemed to constitute human rights violations and/or crimes, other actions and outcomes that can fall under the umbrella of trafficking may, in other context, be considered legal and/or unproblematic in terms of human rights. For instance, exploitation within prostitution can be an outcome of trafficking but prostitution is regulated as a legitimate economic sector in many countries rather than universal criminalized or treated as a human right abuse. Moreover, cases of trafficking do not always fit within conventionally and legally accepted boundaries between forced and voluntary migration, and between legal and illegal migration. Defining trafficking thus involves making decision about which particular actions and outcomes, and in what particular combination, should be included under its umbrella.

As with many fields, there are substantial disagreements around definitions, frameworks, and strategies. In this research we examine existing debates, presenting both sides for the point of view.

The definition below are based on the UN protocol of United Nations Convention Against Transnational Organized Crime, Supplemental Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

(xvi)http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _edn16

which was adopted in November 2000 by UN General Assembly.

United Nations Convention Against Transnational Organized Crime, Supplemental Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

“Trafficking in persons” shall mean recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”;

The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) [see above] of this article;

The definition makes clear that trafficking covers not only the transportation of a person from one place to another, but also their recruitments and receipt so that anyone involved in the movement of another person for their exploitation is part of the trafficking process.

It also states that trafficking is not limited to sexual exploitation and also takes place for forced labor and other slavery like practices. This means that people who migrate for work in agriculture, catering, construction or domestic work, but are deceived or coerced into working in conditions they did not agree to, are also defined as trafficked people.

Another definition provide by United States federal law:

Trafficking Victims Protection Act (TVPA) of 2000, [United States federal law; the definition below is of 'severe forms of trafficking in persons', for which there are criminal penalties in the United States]

http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _edn17(xvii)

1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion or in which the person induced to perform such an act is under 18, or

2) *The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion, for the purpose of subjecting that person to involuntary servitude, peonage, debt bondage, or slavery.*

The definition given by organization Global Alliance Against Traffic in Women is that *trafficking is complex phenomenon comprising all actions aimed at recruiting women and children in the countries of their residence and/or their transportation abroad for future exploitation through the use of violence or threats, abuse of power and corruption, debt bondage, fraud schemes, and other forms of coercion.*

In September 2001, the new Criminal Code of Ukraine came into force, which constitutes a radical departure from the previous one, essentially based upon the Code of the USSR. Article 149 of the new Code creates the crime of trafficking in people. It *provides criminal liability for trafficking in people or entering any other illegal agreements regarding transfer of humans as well. As stipulated by law, a person who is found guilty of being involved in direct or indirect. Open or hidden trafficking in human being aimed at their sale for sexual exploitation or pornographic business, or their use in military conflict, as well a person who adopts children for commercial purpose, will face criminal charges and will be punished by imprisonment for a period of three to eight years, with confiscation of property. A person, who is involved in the sale of children or an official abusing his position in relation to trafficking, will be punished by imprisonment for a period of five to ten years.* In situation where the trafficking in human being has lead to serious consequence or is organize be a criminal organization, and in cases of trafficking intended for the transplantation of human organ, the punishment is increasing to eight to fifteen years. This new article is more in accordance with international standards stipulated in UN-protocol

(xviii)http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _edn18

than the one found in the old criminal code

(xix)http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _edn19.

Nevertheless many criticisms had been leveled at article 124-1 on the basis that elements of the crime had not been defined, and so police and prosecutors were unclear as to how to apply its provisions in practice. Ergo, first of all, the term “human trafficking” is usually translated into Russian-Ukrainian as “trade in people” (torgovlia liud’mi). It is necessary to underline that is not an exact definition because “trafficking” includes transportation and relocation, not only trade.

Than, new terms such as ‘debt bondage’, ‘sexual exploitation’ and ‘exploitation of work’ were used with no guidance as to their definition. No official commentaries were provided concerning implementation of the law and although these commentaries are not binding, courts generally rely on them in interpreting the law. Also, law enforcement officers were not provided with any new ‘procedures’ in relation to trafficking, as is normally the case in connection with the enforcement of new crimes. The overall effect of these inadequacies has been to discourage police from investigating allegations of trafficking, and prosecutors have also been reluctant to initiate new cases. Until the present, more than nine hundred fifty trafficking cases have been filed and many other cases are under active investigation. In any case the number of prosecuted cases is steadily growing, demonstrating the political will of the Ukrainian Government to fight against this phenomenon. However, because of difficult to prove such cases, the lack of jurisprudential precedents and the lack of experience of law enforcement and judicial

agencies in regards to trafficking, a number of cases are only being prosecuted under related crime definitions and not under “Trafficking”. Nevertheless, as public awareness is raised, and law enforcement bodies and judiciary receive training, this trend is diminished and a great number of cases are being prosecuted under the “trafficking” statute”.

Number of Criminal Cases Filed in Ukraine
under art. 124 UCC (old) and art. 149 UCC (new)

Year	1998	1999	2000	2001	2002	2003	2004
# of cases	2	11	42	91	298	250	950

As I mention before a new article was meant to correspond with international standards and to prevent commitment of such crimes. Nevertheless, this article is deeply rooted in article 124-1 of the earlier Criminal Code. The same terminology described above is used without further definition, and it is not clear whether new procedures will be issued to the police for their guidance in investigating crimes of trafficking. One aspect of the new law, which worsens the position of trafficked women, is the requirement that the offence is only committed where a person is trafficked across an international border. But according to international standards

(xx)http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _edn20

it should be noted that these offence do not necessary involve the international trafficking in human being, nor do they necessary imply exploitation of the victims. Many of the women trafficked in Ukraine are only moved from one region to another and do not necessarily leave the country. The traffickers of such individuals could not be prosecuted with the crime of trafficking under article 149 of the Criminal Code.

As for the crime definitions, it is noteworthy that Ukraine already uses a broad definition of trafficking, including purposes for which human being are trafficked. However, it must be concluded that in general crimes definitions are insufficiently clear and unequivocal to be used in practice, for example, criminal elements such as the necessity of “coercion”, “border crossing”, “consent”

(xxi)http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _edn21,

or “systematic”

(xxii)http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _edn22

and “organized group”.

Absolutely unclear is whether or not coercion is a constitutive element also in cases of sexual exploitation. As to the means – in any facilitation of migration for sex work punishable as trafficking in person or only if there is an element of coercion or deception? And to the purpose – does all work in the sex industry constitute sexual exploitation per se, or does only sex work under exploitative and coercive conditions qualify as “sexual exploitation”?

With respect using term “sexual exploitation”. In this respect it is important to note that many important actors on the international level

(xxiii)http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _edn23

consider the use of the term “sexual exploitation as inadequate, and propose to abolish the term. “In order to highlight the commonality between the different purpose for which

people are trafficked, the focus should be on the forced, exploitative, or slavery-like conditions of the work or relationship and whether those conditions were freely and knowingly consented to by the person”.

(xxiv)http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _edn24

In a country in which the judicial system cannot be said to be entirely incorruptible, equivocal and ambiguous crimes definitions open the possibility for corruption, not only at the level of law enforcement officers and prosecutors, as it give them too much discretionary power.

The other point is that the principal route of trafficking in women lies through employment agencies, which legalize this activity. Article 149 of the Criminal Code does not provide any efficient mechanisms, which could make it possible to disclose criminal activities of such agencies as the “purpose of further sale” or other criminal purposes defined by article 149 are practically impossible to prove.

When it comes to investigation, in practice it appears to be difficult for the police to get a trafficking case opened by the prosecutor. One of the reason fear among prosecutors of losing case because of too little evidence, (because the victim or witness refuses to testify in court).

This fear is at least partly explained by the fact that prosecutors can be disciplined for losing a case. This severely affects the independence of prosecutors and their willingness to open trafficking cases as these are complex and time consuming, and carry a high risk of “failure”. In addition there is disinterest among prosecutors for this kind of cases on all levels in prosecutors office.

A special problem in bring cases of trafficking to court is the reluctance of victims to report to the police and subsequently testify in court. Though not required by law, a request by the victim is seen as indispensable. Many reasons can be mentioned to explain this reluctance of the victims. One of them is absence of witness protection and procedural safeguards for victims or witnesses during criminal proceedings, especially with regards to the protection of the privacy and safety of the victim.

Policy recommendations

The following points should be taken into consideration in defining trafficking:

- Trafficking should be viewed as transportation and relocation;
- Trafficking is organized transportation that is supported and implemented though purposeful actions on the part of individuals and organizations;
- Trafficking does not always have profit earning or debt repayment as is objective. Persons can also be transported for political reasons;
- Human trafficking does not always involve criminal acts that result in human rights violations.

It is necessary:

- To the over-simplify text and make it more understandable;
- To criminalized the process of people purchase;

(i) http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _ednref1

General Assembly Distr: 1 September 1998 Original: English. 53 session Agenda item 103 Advancement of women: Trafficking in women and girls Report of the Secretary-General Summary Pursuant to General Assembly resolution 52/98 of 12 December 1997

(ii) http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _ednref2

(iii) http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _ednref3 IOM STOP Conference on Preventing And Combating Trafficking in Human Beings – A Global Challenge for 21st Century – organized under the High Patronage Of H.R.M. the King of the Belgians European Parliament’s Hemicycle , Brussels, Belgium, 18-20 September 2002

(iv) http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _ednref4L.

Shelley Organized Crime and Corruption in Ukraine: Impediments to the Development of a Free Market Economy, Demokratizatsiya, Vol. 6, No. 4, pp. 648-663, Fall 1998.; L.Shelley Crime Victimized Both Society and Democracy, E-Journal of the U.S. Department of State (2001).

(<http://usinfo.state.gov/journals/itgic/0801/ijge/gj06.htm>); Sally Stoecker The Rice in Human Trafficking and the Role of Organized Crime. Demokratizatsiya The Journal of Post-Soviet Democratization Vol.8 #1 pp. 123-129 Winter 2000;

(v) http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _ednref5L.

Shelley Sex Trade: Trafficking of Women and Children in Europe and United States, hearing before the Commission on Security and Cooperation in Europe (the Helsinki Commission), June 28, 1999.

<http://www.american.edu/traccc/pdfs/HTMLs/testimony699.htm>

http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _ednref6 Ibid

(vi) *ibid.*

(vii) *ibid.*

(viii) http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _ednref8

Ukraine is recognized as a country-supplier of “human stock” to Yugoslavia, Hungary, Czechia, Italy, Cyprus, Greece, Turkey, Israel, USA, UAE, etc. According to Embassy of Ukraine in Greece, there are three thousand young Ukrainian women working in legal or illegal sex business in Athens and Saloniki, and five thousand of such women are in Turkey. See: O.V.Druz’, O.O.Hryshynska, Trafficking in Young Women, Observation of Women’s Human Rights and Relevant Tasks of Law Enforcement Bodies in Ukraine, a collection of academic articles edited by the University of the Interior of Ukraine and International Women’s Human Rights Protection Center La Strada Ukraine, Kharkiv-Kyiv, 1999, p. 88

(ix) http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _ednref9

Minnesota Advocates Group, Trafficking in Women: Moldova and Ukraine, December 2000, p. 16. The International Helsinki Federation for Human Rights in its Women 2000

report at p. 491 cites the figure of 100,000 having been transported across the border illegally since 1991 from the Ukraine. Current estimates appear much higher however.

(x) http://www.policy.hu/pishulina/Policy_Paper_Outline.html - *_ednref10*IOM, Information Campaign against Trafficking in Women from Ukraine: Research Report 1998, p. 16.

(xi) http://www.policy.hu/pishulina/Policy_Paper_Outline.html - *_ednref11*
Nina Karpachova, Parliamentary Ombudsman for Human Rights in Ukraine, has also been reported as referring to this number of women trafficked from Ukraine. However, these figures appear somewhat exaggerated and thus dubious to experts in sociology. Still, Ukraine has no published official statistics on the magnitude of the problem, while unofficial estimates of the numbers of persons being trafficked out of the country differ.

(xii) http://www.policy.hu/pishulina/Policy_Paper_Outline.html - *_ednref12*
Ukraine now has marginalised women who have been largely excluded from the development of democratic processes through discriminatory policies practised by political parties, governments and individual employers. Recent studies and discussions in Ukraine on the subject of women's situation confirm that the past political and economic changes have not been gender neutral. Women make up 54% of the population of Ukraine and 45% of its labor force. Over 60% of all Ukrainian women have higher education (college level and above). However, the unemployment rate of women is very high compared to men with the same educational background (80% of all unemployed in Ukraine are women), not to mention the extensive hidden unemployment among women.

(xiii) The term "Rule of Law" embodies the basic principles of equal treatment of all people before the law, fairness, and both constitutional and actual guarantees of basic human rights. A predictable legal system with fair, transparent, and effective judicial institutions is essential to the protection of citizens against the arbitrary use of state authority and lawless acts of both organizations and individuals. Unfortunately in Ukraine where democratic tradition is weak and judicial independent is compromised individual rights are not truly guarantee.

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(xiv) http://www.policy.hu/pishulina/Policy_Paper_Outline.html - *_ednref14*
Ukraine is a member of the United Nations and has committed to adhering to internationally recognized human rights standards. Specifically, Ukraine ratified the Convention on the Elimination of All Forms of Discrimination against Women with a Decree of the Presidium of the Supreme Council of the Ukrainian Soviet Socialist Republic in 1981.

(xv) http://www.policy.hu/pishulina/Policy_Paper_Outline.html - *_ednref15*
Trafficking – A Demand Led Problem – Save the Children Sweden and Bridget Anderson, Julia O'Connel, 2004

(xvi) http://www.policy.hu/pishulina/Policy_Paper_Outline.html - *_ednref16*
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, ("Protocol"), G.A. res. 55/25, annex II, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol. I) (2001), Art. 3

(xvii) http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _ednref17

Note that the U.N. definition is broader than the U.S. definition, as it includes organ trafficking and an expanded list of 'means', such as abuse of a position of vulnerability. Both definitions do not require sex trafficking of children to include any force or coercion, recognizing that children cannot meaningfully consent to sexual exploitation. They are also both inclusive of transnational and internal trafficking in persons.

(xviii) http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _ednref18

Protocol to Prevent, Suppress and Punish trafficking in person, Especially Women and Children, supplementing the United Nations Conventions Against Transnational Organize Crime

(xix) http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _ednref19

Art. 124 Criminal Code of Ukraine (old)

(xx) http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _ednref20

Protocol to Prevent, Suppress and Punish trafficking in person, Especially Women and Children, supplementing the United Nations Conventions Against Transnational Organize Crime

(xxi) http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _ednref21

Art. 149 UCC- new

(xxii) http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _ednref22

Art. 303 UCC- new

(xxiii) http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _ednref23

Roelof Haveman, Marjan Wijers Review of the Law on Trafficking in Person in Ukraine, OIM, Brussels, 2001

(xxiv) http://www.policy.hu/pishulina/Policy_Paper_Outline.html - _ednref24

Ibid. p.9

Appendices

Criminal Code of Ukraine

Article 149

Trafficking in Human Being and Other Illegal Transfer Deals with Respect to a Human Being

1. Sale, other transfer for payment or any other illegal deals with regard to a person, involving legal or illegal movement of that person, with or without his/her consent, across the border of Ukraine for further sale or other transfer to any person (or persons) for the purpose of sexual exploitation use in porno business engagement in criminal activities, peonage, adoption for commercial purpose, us in armed conflict, labor exploitation shall be punishable by imprisonment for a term of 3 to 8 years.

2. The same actions committed with respect to a minor, or several persons, or repeated, or committed by a group of person upon their prior conspiracy, or through abuse of office, or by a person on whom the victim was financially or otherwise dependent shall be punishable by imprisonment for a term of 5 to 12 years with or without the forfeiture of property.
3. Any such actions as provided for by paragraphs 1 and 2 of this Article where committed by an organized group, or involving illegal taking of children abroad or failure to bring them back to Ukraine, or for the purpose of removal of the victim's organs or tissues for transportation or forcible donor purposes or where these actions caused any grave consequences shall be punishable by imprisonment for a term of 8 to 15 years with the forfeiture of property.

Article 302

Creating or running brothels and trading in prostitution

1. Creating or running brothels and also trading in prostitution shall be punishable by a fine up to 50 tax-free minimum incomes or restraint of liberty for a term up to 2 years.
2. The same actions committed for gainful purposes or by a person previously convicted of this offense or by an organized group shall be punishable by restraint of liberty for a term up to 5 years or imprisonment for the same term.
3. Any such acts as provided for by paragraph 1 or 2 of this Article if committed by engaging a minor shall be punishable by imprisonment for a term of 2 to 7 years.

Article 303

Prostitution or compelling to and engaging in prostitution

1. Systematic prostitution, that is gainful provision of sexual services, shall be punishable by a fine of 50 to 500 tax-free minimum incomes, or community service for a term up to 120 hours.
2. Compelling to or engaging in prostitution, that is to provide sexual services for a fee by use of violence or threats of violence or destruction or damage of property or by blackmail or deceit shall be punishable by a fine of 500 to 1000 tax-free minimum incomes, or arrest for a term up to 6 months or imprisonment for a term of 1 to 3 years.
3. Any such acts as provided for by paragraph 1 or 2 of this Article, if committed in regard of a minor or by an organized group shall be punishable by imprisonment for a term of 3 to 5 years.

4. Trading in prostitution, that is creating, leading or participating in an organized group which supports activities related to the provision of paid sex services by males and females for gainful purposes shall be punishable by imprisonment for a term of 5 to 7 years.

Article 304

Engaging Minors in Criminal Activity

Engaging minors in criminal activity, drinking alcohol, begging or gambling shall be punishable by restraint of liberty for a term up to 5 years or imprisonment for the same term.

Article 331

Illegal Crossing of the State Border

1. Crossing of the state border of Ukraine in any manner beyond the points of entry on the state border of Ukraine or at the points of entry on the state border of Ukraine but without appropriate documents or permission shall be punishable by a fine up to 50 tax-free minimum incomes or arrest for a term up to 6 months or restraint of liberty for a term up to 3 years.
2. The same actions committed by a person previously convicted for the same offense shall be punishable by arrest for a term up to 6 months or restraint of liberty for a term up to 3 years.
3. Any such actions as provided for by paragraph 1 or 2 of this Article if accompanied with the use of weapons shall be punishable by imprisonment for a term of 2 to 5 years.

United Nations Convention Against Transnational Organized Crime, Supplemental Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

“Trafficking in persons” shall mean recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”;

The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) [see above] of this article;'

Trafficking Victims Protection Act (TVPA) of 2000, [United States federal law; the definition below is of 'severe forms of trafficking in persons', for which there are criminal penalties in the United States]

- 1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion or in which the person induced to perform such an act is under 18, or
- 2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion, for the purpose of subjecting that person to involuntary servitude, peonage, debt bondage, or slavery.

COORDINATED		APPROVED
At the sitting of the Coordinating Council on Prevention of Trafficking in Humans under the auspices of the Ombudsman of Ukraine		By the resolution of the Cabinet of Ministers of Ukraine Dated “_5_” June_ 2001 ? _766__

COMPREHENSIVE PROGRAM ON FIGHTING OF TRAFFICKING IN HUMANS

I. Prevention of trafficking in humans

1.1. Local bodies of self- governance shall be recommended to establish standing commissions on coordination of actions and informational exchange on prevention of trafficking in humans, with participation of NGOs.

Council of Minister of the Crimea Autonomous Republic, oblast, Kyiv and Sevastopol Municipal State Administrations.
I quarter 2002

1.2. Target prophylactic measures aimed at prevention of trafficking in humans taking in account the dynamics of the spread of the phenomenon are to be developed and implemented.

Ministry of Internal Affairs, Council of Minister of the Crimea Autonomous Republic, oblast, Kyiv and Sevastopol Municipal State Administrations.
Whole period.

1.3. Annual regional and inter-sectoral meeting-seminars on coordination of efforts, carrying out analysis and specifying of the strategy of implementation of the measures on prevention of trafficking in humans shall be implemented at the national level.

Ministry of Labor, Ministry of Internal Affairs, ministry for Foreign Affairs, MOH, Ministry of Health, State Committee on Information, National Coordination Council on Prevention of Trafficking in Humans Under Auspices of the Ombudsman of the Verkhovna Rada of Ukraine (as agreed).
Permanently.

1.4. Employment of school-leavers and vocational students shall be ensured according to established order.

Ministry of Labor, State Committee on Family and Youth, Council of Minister of the Crimea Autonomous Republic, Kyiv and Sevastopol Municipal State Administrations
Permanently.

1.5. Sociological examination of the trafficking in humans shall be continued.

State Committee on Family and Youth, Ukrainian Institute on Social Research, National Coordination Council (as agreed).
II quarter of 2002.

1.6. Examination, summarizing and dissemination in Ukraine of the national and foreign practices of prevention and fight of the trafficking in humans shall be continued.

Ministry of Labor, Ministry of Justice, Ministry for Foreign Affairs, Ministry of Internal Affairs, MOH, Ministry of Health, State Committee on Family and Youth, State Committee on State Border, National Coordination Council (as agreed).
Permanently.

1.7. Monitoring aimed at disclosure of the disguised information, which may be related to trafficking in humans shall be done. An effective mechanism providing liability for submitting and placing ads on the issue shall be worked out.

State Committee on Information, Antimonopoly Committee, ministry of Labor, State Committee on Standards, Council of Minister of the Crimea Autonomous Republic, oblast, Kyiv and Sevastopol

Municipal State Administrations, civic organizations.
Permanently.

1.8. Level of information distribution among population concerning measures and methods, which are used by traffickers in humans shall be enhanced, as well information on potential risk of exploitation, violence and abuse regarding illegal immigrants.

Informational and educational events concerning prevention of trafficking in humans shall be held systematically. Special cycle of radio programs shall be launched; columns in printed and electronic mass media shall be set up with purpose of promulgation of the consequences of trafficking in humans.

State Committee on Information, Ministry of
Internal Affairs, Ministry for Foreign Affairs,
Ministry of Health, Ministry of Justice, State
Committee on Family and Youth, Council of
Minister of the Crimea Autonomous

Republic, oblast, Kyiv and Sevastopol Municipal
State Administrations, National Coordination
Council (as agreed). Permanently.

1.9. Base on existing practices, work shall be continued on development and implementation of the special course “Prevention Trafficking in Humans” for students of the “afterdiploma” training courses at the oblast pedagogical universities, students of the pedagogical colleges of all levels of accreditation.

MOH, other bodies of executive power, having in
their subordination educational colleges, civic
organizations (as agreed).
Starting with 2003.

1.10. Publication of the informational materials on the issues of social protections of children and youth shall be continued.

MOH, State Committee on Family and Youth,
Council of Ministers of Crimea Autonomous
Republic, Kyiv and Sevastopol Municipal State
Administrations, with participation of nongovernmental
and international organizations.
2002 – 2003.

1.11. Legal Encyclopedia for Children and Youth shall be prepared and published.

MOH, Academy of Pedagogical Sciences.
2002 – 2005.

1.12. Training in prevention of trafficking in humans under sexual education programs and consulting in the centers of family planning, women’s and youth crisis centers shall be continued.

MOH, Ministry of Health, ministry of Justice,
Council of Ministers of Crimea Autonomous
Republic, oblast, Kyiv and Sevastopol Municipal
State Administrations.
Permanently.

1.13. Unified vocational training system and system of retraining of unemployed, youth in particular, in vocations, which are at demand in the labor market with consideration for the specificity of the regions shall be set out.

Ministry of Labor, State Entrepreneurship,
2002 – 2003.

1.14. Favorable conditions for women's involvement in starting businesses shall be created (one-time unemployment benefit for entrepreneurial activities).

Ministry of Labor, Comprehensive Mandatory
Unemployment State Insurance Fund of Ukraine,
State Entrepreneurship.
2002 – 2005.

1.15. Mechanism shall be worked out and conditions created for support of micro crediting and development of small and medium businesses.

State Entrepreneurship and non-governmental
Organizations (as agreed).

1.16. Permanent regional seminars for "hot- line" specialists, volunteers shall be held in order to provide them with methodological, informational and practical assistance on prevention of trafficking in humans.

State Center of Social Services for Youth with
Participation of international and civic organizations,
National Coordination Council (as agreed).
Permanently.

1.17. Permanent control over activities of the entrepreneurial entities holding licenses on mediatorial services in employment abroad, tourist firms and marriage agencies shall be exercised.

Ministry of Labor, Ministry of Internal Affairs, State
Customs Services, STA, State Committee on Border,
Ministry for Foreign Affairs, Security Service.
2002 – 2005.

1.18. Permanent control over organizing of rehabilitation and vacations for children abroad, and over medical facilities, child's houses, children's homes, and boarding schools for orphans and children whose parents were stripped of their parental rights shall be exercised in order to observe legislation- in-force on adoption to avoid trading in children.

MOH, Ministry of Health, Council of Ministers of
Crimea Autonomous Republic, oblast, Kyiv and
Sevastopol Municipal State Administrations.
Permanently.

II. Prosecution of traffickers in humans

2.1. Within the framework of international cooperation the mechanism of information exchange between law enforcement bodies of other countries on legal entities and persons engaged in trans-border trade in humans shall be improved, as well as methods and investigations procedures and discovering crimes related to trafficking in humans.

Ministry of Internal Affairs, Ministry for Foreign Affairs.
During the period.

2.2. Measures of border control shall be enhanced, especially concerning persons, who may potentially become victims of trafficking in humans. Ukrainian border points shall be equipped with automatized complexes for border control and informational materials on the trafficking in humans.

State Committee on Border, ministry of Internal
Affairs, Ministry of Economy and on European
integration issues of Ukraine.
2002 – 2003.

2.3. Cooperation with the border control bodies of other countries shall be strengthened.

State Committee on Border.
2002 – 2003.

2.4. Effective mechanism of protection of persons, which participate in criminal justice procedures, in particular in judicial inquiry and investigation of crimes, as well as in court hearings related to trading in humans.

Ministry of Internal Affairs, Security Service,
international organizations (as agreed).
2002 – 2003.

2.5. Training of personnel of the law enforcement bodies on the issues related to prevention of the trafficking in humans shall be ensured, as well as prosecution of criminals, protection of victims and witnesses. Human rights, gender issues and international practices on the issue shall be taken into consideration.

Ministry of Internal Affairs, State Committee on
Border, Security Service.
Permanently.

2.6. Supreme Court of Ukraine to be recommended to summarize judicial practices concerning crimes related to trafficking in humans.

Supreme Court of Ukraine (as agreed).

2.7. Information shall be provided on regular basis to the bodies of the Ministry of Internal Affairs by units of the State Committee on Border concerning detention of persons who attempted to illegally cross the border using forged documents, and concerning deportation of persons, which suffered from trafficking in humans.

State Committee on Border, Ministry of Internal Affairs, Security Service, Ministry for Foreign Affairs.
Permanently.

III. Protection of victims and their reintegration

3.1. The initiative of the Kyiv State Municipal Administration on development and submission to the Cabinet of Ministers of Ukraine of the proposal on establishing in Kyiv of the Reintegration Center for victims of trafficking in humans shall be approved.

Kyiv State Municipal Administration.
2002.

3.2. Local self-governance bodies shall be recommended to provide necessary medical, psychological and legal assistance to victims of crimes related to trafficking in humans or other violent actions.

Council of Ministers of Crimea Autonomous Republic, oblast, Kyiv and Sevastopol Municipal State Administrations, State Committee on Family and Youth, civic organizations (as agreed).
Permanently.

3.3. To assist in building of a network of reintegration and anti-crises centers for persons who suffered from violence and trafficking in humans. To implement programs and initiatives of international and non- governmental organizations on prevention and fight of trafficking in humans, protection of rights of those who suffered from trafficking in humans.

State Committee on Family and Youth, Council of Ministers of Crimea Autonomous Republic, oblast, Kyiv and Sevastopol Municipal State Administrations with participation of civic organizations and charity funds (as agreed).
Permanently.

3.4. To continue work on training and holding of inter-sectoral seminars, round tables, conferences and trainings on fighting trafficking in humans, improvement of mechanisms

of support to victims of those crimes with officers of central and local executive power bodies, law enforcement bodies, diplomatic representative offices and consulates, social protection institutions, educational and health protection systems, migration and border services, and representatives of civic organizations.

State Committee on Family and Youth, Ministry for Foreign Affairs, Ministry of Internal Affairs, Ministry of Justice, State Committee on Border, MOH, Ministry of Health, Ministry of Labor, National Council of Women of Ukraine with participation of civic organizations.
2002 – 2005.

3.5. TO work out and approve Statutes of Reintegration Crises Centers, Shelters for persons who suffered from trafficking in humans.

Ministry of Justice of Ukraine, State Committee on Family and Youth.
2002.

3.6. To assist and provide help in voluntary return of citizens of Ukraine who suffered from crimes related to trafficking in humans.

Ministry for Foreign Affairs, Ministry of Internal Affairs, State Committee on Border, international organizations (as agreed).
Permanently.